17

FILE COPY

FILED
MAR 7 1935
CHARLES ELMORE CROPLEY

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934.

---

No. 585.

---

MRS. OSCAR C. DOTY, ET AL., *Appellants*,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS, *Appellee*.

---

## SUPPLEMENTAL BRIEF OF APPELLEE.

---

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE,
*Attorneys for Appellee.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

## INDEX


| | Page |
|---|---|
| The Facts | 1 |
| Argument | 3 |


### CASES CITED


| | |
|---|---|
| Gibbes vs. Zimmerman, 290 U. S. 326, 78th L. Ed. 342 | 3 |
| Sunday Lake Iron Co. vs. Wakefield, 247 U. S. 350 | 5 |
| National Surety Co. vs. Coreill, 289 U. S. 462 | 5 |


### STATUTES CITED


| | |
|---|---|
| Chapter 143 Laws 1932 | 4 |
| Chapter 251 Laws 1932 | 4 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934.

---

No. 585.

---

MRS. OSCAR C. DOTY, ET AL., *Appellants*,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS, *Appellee*.

---

## SUPPLEMENTAL BRIEF OF APPELLEE.

---

### THE FACTS.

Since our original brief was written we have been served with copy of appellants' brief and in order that certain inaccuracies in appellants' statement of facts may be corrected, we shall refer briefly to the record.

On page 7 of appellants' brief it is said that personal service seems to have been obtained on three of the depositors. The fact is, as shown by record 45, being a finding of fact contained in the decree entered in the trial court, service of process was duly made upon each of the parties (15 in number), directed in the decree to be summoned as representatives of the depositors and creditors as a class.

On page 8 of appellants' brief the statement is made that

under the decree complained of deposits and claims under five dollars were to be paid in full. This is true, but the record 48 and 49 shows that the aggregate of said deposits is $3,649.87, in 4117 separate accounts averaging 87 cents each. And the record further shows that the trial court found as a fact that it would be more economical for all interested parties that said accounts should be paid in full, rather than carry them on the books of the bank and incur the expense of handling them.

On page 10 of appellants' brief is the statement that there was set over to the new bank all cash belonging to the bank in liquidation, as of May 1, 1933, amounting to $102,302.98. The fact is that of the money belonging to the bank in liquidation there was set over to the new bank $75,977.62. Record 52. The two items of money mentioned on record 52, to wit: $14,016.56 and $12,309.06, were not moneys of the bank in liquidation set over to the new bank, but the first item was money that never belonged to the bank in liquidation and the other item was money held in trust for special purposes with any surplus going, not to the new bank, but to the pool assets. Record 57.

On page 11 of appellants' brief the statement is made that the pool assets were held in trust for the new bank and administered under the jurisdiction of the Chancery Court of Lee County, Mississippi, with J. S. Love in charge of same as Agent of the Court, with no definite time stated as to when collections thereupon should be paid to creditors. The decree, Record 56, requires the new bank to make annual account of said trust to the Chancery Court of Lee County, Mississippi, and the Superintendent of Banks of the State of Mississippi was invested with authority to act for the benefit of the creditors interested in the trust, in requiring all things to be done that might be necessary for the safeguarding of their interests.

And also on page 11 of appellants' brief it is said that the new bank is to be reimbursed for all attorneys' fees and court costs expended in collecting the pool assets. The

decree, Record 56, provides that all such fees and costs must be approved by the Chancery Court of Lee County, Mississippi.

## ARGUMENT.

In response to appellants' contention that they had a right to enforce their claims against the insolvent corporation in the manner provided by the laws in existence at the time of the making of the contract in question, we respectfully assert that this contention is contrary to the decision of this Court in the case of *Gibbes vs. Zimmerman*, 290 U. S. 326, 78th L. Ed. 342, wherein the Court says:

> "But although a vested cause of action is property and is protected from arbitrary interference (Pritchard vs. Norton, 106 U. S. 124, 132, 27 L. Ed. 104, 107, 1 S. Ct. 102) the appellant has no property in the constitutional sense in any particular form of remedy; all that he is guaranteed by the 14th Amendment is the preservation of his substantial right to redress by some effective procedure".

And again in that decision the Court says:

> "The substantive rights existing under the old law are preserved. In no proper sense can it be said that any property of the appellant has been taken, injured or destroyed."

All that appellants had, on the Peoples Bank & Trust Co. going into liquidation, was the right to their proportionate share of the assets in liquidation. Under the law and decree assailed, all their substantive rights and more are preserved to them. This is established by the findings in the decree by the Chancery Court and the language of the Supreme Court of Mississippi. Record 115..

On the question of notice given to appellants and other depositors of the bank in liquidation upon the filing of the petition by the State Superintendent of Banks, submitting to the Court for consideration the plan for reopening of

the bank, appellants on page 23 of their brief refer to chapter 143 of the Laws of the State of Mississippi 1932. They say this law relates to the setting of causes in chancery for hearing in vacation and the summons required to be issued to give notice to interested parties of such hearing. Full copy of this statute will be found on pages 122 and 123 of the Record. This statute was in force when chapter 251, Laws of 1932, was enacted. Chapter 143 was approved May 10, 1932, and chapter 251 May 18, 1932.

The proceeding for the reopening of the Peoples Bank & Trust Company under the provisions of said chapter 251 was a matter which by the terms of said chapter 251, the Chancellor was authorized by law to hear and decide in vacation. Therefore, as to notice thereof, said chapter 143, the law not otherwise expressly providing a method, furnished one way of giving notice of the hearing, if summons were necessary. And upon the designation by the Court of the time and place for the hearing and the naming of 15 depositors as representatives of the class upon whom process was to be served, and due service of process upon them, this statute was fully complied with. However, since the proceeding was in a receivership matter pending in the Chancery Court, no summons was necessary, and as held by the Supreme Court of Mississippi in this case no original process by way of summons was necessary and proper citation was in fact ordered and served. Record 110-111.

On page 24 of appellants' brief appears the statement that they were depositors in the defunct bank and were deprived of their property in the amount of several hundred thousand dollars. This is incorrect, as their combined deposits aggregate only $5,401.38, typewritten Record, pages 109-110.

The argument is made in appellants' brief that they have been denied equal protection of the law, because the assailed statute provides that correspondent banks, general creditors, are to be paid in full, while other creditors under the statute must accept such sum as 75 per cent of the

creditors may determine. And appellants say that the decree and judgment of the Court below is in a similar situation. When the petition for the reorganization of the People Bank & Trust Company was filed, no correspondent bank had any claim against it. Record 2 and 111. Therefore, no question may be raised thereon. And the decree complained of did not order cashier's checks paid in full, but put them on the same basis as other common creditors. Record 54. We have already discussed the direction of the decree (Record 48) as to payment of accounts under $5.00. In this connection, we further call attention to the language of this Court in the decision in *Sunday Lake Iron Co. vs. Wakefield*, 247 U. S. 350, cited by appellant, wherein it is said:

> "There must be something more (than errors of judgment)—something which in effect amounts to an intentional violation of the essential principle of practical uniformity".

Appellants say that the proceedings in the Chancery Court in the case at bar are in conflict with the requirements announced by this Court in *National Surety Co. v. Coreill*, 289 U. S., 462.

That case is easily distinguishable from the case at bar. It arose in a Federal District Court and came to this Court from a Circuit Court of Appeals. The case at bar arose in a District Chancery Court in Mississippi and comes to this Court from the Supreme Court of Mississippi. No questions are open here except those arising from claimed violation of constitutional rights and all matters of fact, upon adequate testimony, have been foreclosed.

And again, the entire record in the case at bar shows the plan and appellants' objections thereto were considered in an orderly way and the decree was based upon adequate data. The proceeding was instituted by the Superintendent of Banks, in reality the Receiver, and was by him recommended to the Court; it was approved by more than 75

per cent of the depositors in amount; detailed itemized statement of all assets and of all creditors were furnished; the depositors committee, which had been functioning for more than two years, joined in the petition and recommended it to the Court; testimony in support of the plan was heard from the liquidating agent, who had been in charge of the liquidation for more than two years, and from the representative of the State Banking Department, assigned especially by the Department to the investigation of the plan of reopening this particular bank; these witnesses were cross-examined by the appellant; and in addition, the proceeding was had in the Court in which the liquidation had been pending for more than two years and which had actual knowledge of all that had transpired relative to the liquidation and of which it took judicial notice without proof; and in this case there was not an outright sale, but a decree was carefully drawn, which required that if the assets were found to be worth more on realization than the sum at which they were set over to the new bank, such excess should go back into the pool for the benefit of all creditors. None of these characteristics of the plan under review here were present in the Coreill case.

Since the new bank was to get from the assets only a limited amount and the balance was to go into the pool for the benefit of all creditors, there was no necessity for an exact appraisal of the value of the assets.

Wherefore, we respectfully submit that the decree appealed from is correct and should be affirmed.

Respectfully submitted,

C. Richard Bolton,
Clyde L. Hester,
Hiram H. Creekmore,
*Attorneys for Appellee.*

We certify that we have this day personally delivered copies of the foregoing supplemental brief to E. C. Sharp and Charles S. Mitchell, Attorneys for Appellant.

This, the 6th day of March, 1935.

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE,
*Attorneys for Appellee.*